

JUL 15 1987 - 2 20 PM

ITEL

July 6, 1987

INTERSTATE COMMERCE COMMISSION

IteI Rail Corporation 7-196A067

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

Date JUL 15 1987

Fee \$ 20.00

Washington, D.C.

Hon. Noretta R. McGee, Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Amendment No. 12 dated July 1, 1987 to the Lease Agreement dated June 21, 1978, between IteI Corporation, Rail-Intermodal Division and Crab Orchard & Egyptian Railroad

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to U.S.C. §11303(a), along with a check in the amount of \$20 covering the recordation fee.

Please record this Amendment under the Lease Agreement dated June 21, 1978, between IteI Corporation, Rail-Intermodal Division, and American Rail Heritage, Ltd., d.b.a. Crab Orchard & Egyptian Railroad, which was filed with the ICC on December 22, 1978, and given Recordation No. 9936. Please cross-index this Amendment with the Equipment Trust Agreement dated January 1, 1982, between IteI Rail Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 20, 1983, and given Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

American Rail Heritage, Ltd. (Lessee)
d.b.a. Crab Orchard & Egyptian Railroad
514 North Market Street
Marion, Illinois 62959

FOR FILING
JUL 15 2 11 PM '87
RECORDATION UNIT

This Amendment deletes Equipment Schedule Nos. 2, 3, 4, 5 and 6 in their entirety and places one hundred two (102) flatcars bearing reporting marks from within the series COER 100000-100099 and COER 250000-250099 into an assignment pool with the Wisconsin & Southern Railroad Company.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the fee receipt and ICC acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

:ps
Enclosures

cc: Ginny Hanger

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 16, 1987

Patricia Schumacker-Legal Department
Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on July 15, at 2:20 PM, and assigned re-recording number(s).

14029-L, 14935-E and 9936-P

Sincerely yours,

Noreta K. McGee
Secretary

Enclosure(s)

06/23/87

JUL 15 1987 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 12

THIS AMENDMENT NO. 12 (the "Amendment") to that certain Lease Agreement (the "Lease") made as of June 21, 1978 between ITEL Corporation, Rail Intermodal Division and American Rail Heritage, Ltd. d/b/a **CRAB ORCHARD AND EGYPTIAN RAILROAD** ("Lessee") is made this 25TH day of June, 1987 by and between **ITEL RAIL CORPORATION**, as successor in interest to ITEL Corporation, Rail Intermodal Division ("Lessor"), and Lessee.

R E C I T A L S:

- A.** Lessor has leased and delivered to Lessee one hundred two (102) Flatcars bearing reporting marks within the series COER 100000-100099 and COER 250000-250099 (the "Car(s)") and two hundred flatcars listed on Equipment Schedules No. 3, No. 4, No. 5 and No. 6 have not been delivered.
- B.** The flatcars listed on Equipment Schedule No. 2 have been incorporated into Equipment Schedule No.1.B.
- C.** The parties desire to remove Equipment Schedule No. 2 and the undelivered flatcars from the terms of the Agreement.
- D.** Lessor and Lessee desire that the Cars be placed into a new Assignment Agreement (the "WSOR Assignment Agreement") between Lessee and Wisconsin & Southern Railroad Company ("WSOR") to improve the utilization of and revenue from the Cars.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Lease as follows:

- 1.** All terms defined in the Lease shall have their defined meanings when used in this Amendment.
- 2.** Equipment Schedules No. 2, No. 3, No. 4, No. 5 and No. 6 are removed from the Agreement in their entirety.
- 3.** Lessor and Lessee agree that the Cars shall be placed into an assignment pool on the WSOR's railroad lines in order to improve the utilization of and revenue from the Cars.
- 4.** For the purposes of paragraph 13 of the Lease, Lessor hereby grants Lessee full power and authority to enter into, in the name of Lessee, the WSOR Assignment Agreement precisely in the form of Exhibit A attached hereto. Under said WSOR Assignment Agreement, Lessee shall be empowered to place the Cars in the possession of WSOR and WSOR shall have the right to utilize the Cars in interline revenue service under

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT.

Lessee's reporting marks as set forth in the WSOR Assignment Agreement. Lessee shall take appropriate action to terminate Cars from the WSOR Assignment Agreement on the date of the next termination opportunity as provided in the WSOR Assignment Agreement whenever, and only, upon receiving written instructions ("Instructions") from Lessor to do so.

5. Lessor may, at its sole option and expense and upon not less than ten (10) days notice to Lessee, modify each flatcar to bear two (2) forty-five foot (45') Trailers. Upon the completion of such modification, with respect to all the Cars, Lessor shall deliver to Lessee, and to WSOR if necessary, a Certificate of Modification in the form of Exhibit B attached hereto.
6. Pursuant to the WSOR Assignment Agreement, if Lessor does not issue instructions to Lessee within thirty (30) days after the expiration or termination date of the WSOR Assignment Agreement (the "Ending Date"), Lessor shall pay to Lessee, with respect to each Car located on WSOR's railroad properties, if any, an amount equal to one dollar (\$1.00) per Car per day ("Penalty"). The Penalty shall commence on the thirty-first (31st) day after the Ending Date ("Penalty Date"). Commencing at 12:01 a.m. on the Penalty Date, each Car shall be per diem and mileage free to WSOR through and including the hour such Car is interchanged off of WSOR's lines.
7. With respect to the Cars, commencing with the Compliance Date (as hereinafter defined) through and including the Ending Date, Section 6 of the Lease shall be amended by the substitution of the number "100%" in lieu of the number [REDACTED] each time that it appears. Immediately after the Ending Date, the number [REDACTED] shall be reinstated in Section 6 of the Lease as it originally appears with respect to the Cars. The Compliance Date, with respect to each of the Cars, shall be the date such Car was first interchanged empty to WSOR to be placed into an assignment pool under Car Service Directive 165.
8. The words "pursuant to the Assignment Agreement dated as of June 27, 1984 between Lessee and WSOR." in Subsection 6.A.(vi) to the Agreement are replaced by the words "pursuant to the Assignment Agreements dated as of June 27, 1984 and June 25, 1987 between Lessee and WSOR."
9. With respect to any of the Cars, nothing contained herein shall (i) be deemed to constitute a waiver or otherwise modify, affect or impair any sums due to Lessor or Lessee under the terms and conditions of the Lease for any period of time prior to the Compliance Date or after the Ending Date, or (ii) be deemed to constitute a waiver or otherwise modify, affect or impair the powers, rights, or remedies vested in or available to Lessor or Lessee under the terms and conditions of the Lease with regard to any period prior to the Compliance Date or after the Ending Date.
10. Except as expressly modified by this Amendment, all terms and conditions of the Lease shall remain in full force and effect.

11. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By: *DD Hayes*

Title: *President*

Date: *July 1, 1987*

AMERICAN RAIL HERITAGE, LTD.

d/b/a CRAB ORCHARD AND
EGYPTIAN RAILROAD

By: *Robert Kahney*

Title: *Exec. V.P. (Operations)*

Date: *June 25, 1987*

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

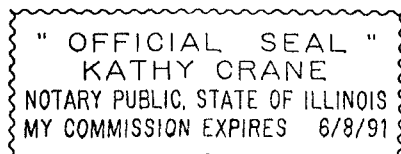
On this 1st day of July, 1987, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 12 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker
Notary Public

STATE OF Illinois)
) ss:
COUNTY OF Williamson)

On this 25th day of June, 1987, before me personally appeared Herbert J. Joherg, to me personally known, who being by me duly sworn says that such person is Ex. V.P. - Operations of American Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad, that the foregoing Amendment No. 12 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Kathy Crane
Notary Public

EXHIBIT A

June 25, 1987

Mr. J.J. Malloy
Senior Vice President and General Manager
Wisconsin & Southern Railroad Company
511 Barstow Street
Horicon, Wisconsin 53032

Dear Mr. Malloy:

Please accept this letter as the agreement ("Assignment Agreement") whereunder American Rail Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad ("COER") shall supply the Wisconsin & Southern Railroad Company ("WSOR") with one hundred two (102) 89'4" dual purpose flatcars bearing reporting marks from within the series COER 100000-100099 and COER 250000-250099 as listed on Schedule No. 1 attached hereto ("Flatcar(s)") and whereunder WSOR shall place said Flatcars into an assignment pool on WSOR's railroad lines under Car Service Directive 165 and shall register such assignment pool and Flatcars with the Association of American Railroads ("AAR").

The term of this Assignment Agreement with respect to all Flatcars shall commence on July 1, 1987 and expire on June 30, 1992 ("Term").

WSOR shall not make any alterations to the Flatcars without COER's prior written consent. During the Term of this Assignment Agreement, WSOR shall load the Flatcars prior to loading substantially similar flatcars leased or assigned from other parties or purchased by WSOR subsequent to the date of this Assignment Agreement or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit WSOR from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. During the Term, COER may replace any or all Flatcars with similar flatcars bearing different railroad marks upon prior written notice from COER to WSOR.

If any Flatcar returns to COER's lines as a result of WSOR (i) not filing the assignment pool code properly, or (ii) not properly endorsing the waybill for such Flatcar, WSOR shall be responsible for all costs associated with returning such Flatcar to WSOR. COER shall use its best efforts to prevent any Flatcar from being interchanged onto its lines during the term of the Assignment Agreement, including advising COER's connecting carrier that the Flatcars have been placed into an assignment pool on WSOR's lines and that the connecting carrier should not return such Flatcars to COER during the Term.

COER may, at its sole option and expense, during the Term and upon not less than ten (10) days' prior written notice to WSOR, modify each Flatcar to bear two (2), forty-five foot (45') trailers. Upon the completion of such

modification with respect to all Flatcars, COER shall deliver to WSOR a Certificate of Modification in the form of Schedule No. 2 attached hereto.

During the Term of this Assignment Agreement WSOR shall comply with the handling carrier's obligations under AAR Interchange Rules while the Flatcars are in WSOR's possession and fulfill the obligations set forth herein. WSOR shall be entitled to per diem and mileage relief per Flatcar for each day such Flatcar is on WSOR's railroad lines. WSOR shall substantiate said per diem and mileage relief by appropriate movement records. Such movement records shall be delivered to COER within sixty (60) days from the end of the service month (hereinafter defined as the calendar month in which per diem and mileage payments were actually earned).

For the purposes of this Assignment Agreement, the following definitions are provided:

- A. "Per Diem Revenues" are the total per diem revenues earned and due from other railroad companies for the handling and use of the Flatcars.
- B. "Mileage Revenues" are the total mileage revenues earned and due from other railroad companies for the handling and use of the Flatcars.
- C. The "Per Diem Base Amount" is defined as the sum equal to the Per Diem Revenues which the Flatcars would have earned in the aggregate at a Utilization Rate (as defined hereinbelow)
- D. The "Mileage Base Amount" is defined as the sum equal to the Mileage Revenues which the Flatcars would have earned in the aggregate assuming mileage of per Flatcar.
- E. The "Utilization Rate" of the Flatcars shall be determined by a fraction, (a) the numerator of which is the aggregate number of days in each calendar quarter that Per Diem Revenues were earned on the Flatcars, and (b) the denominator of which is the aggregate number of days in each calendar quarter that the Flatcars are placed in an assignment pool on WSOR, minus (i) each day, if any, that each Flatcar is at a repair facility designated by Itel Rail Corporation ("Repair Facility") being modified, as set forth hereinabove, to bear two (2), forty-five foot (45') trailers and (ii) each day, if any, that each Flatcar is detained awaiting receipt of materials from Itel Rail Corporation needed for repairs to or replacement of hitches or FreightMaster units for such Flatcar, commencing from the date Itel Rail Corporation has received a written request from WSOR or from the Repair Facility for such materials through and including the earlier of the date such materials are received or such Flatcar is released into service.

If, after the date of execution of this Agreement by both parties, the

calendar quarter or applicable portion thereof shall be deducted from said Excess Per Diem prior to calculating the Excess Per Diem due to COER and WSOR. If, after the date of execution of this Agreement by both parties,

Mileage Base Amount.

If, with respect to any calendar quarter, revenues with respect to the Flatcars, in the aggregate, are less than the cash equivalent ("Cash Amount")

Table in the April 1987 edition of The ICC Official Railway Equipment Register

than ten (10) days' prior written notice to WSOR, terminate this Assignment Agreement as to such Flatcars as COER shall determine; provided, however, that WSOR may, at its option, within ten (10) days of receipt of such notice from COER, void such termination by paying to COER an amount equal to the difference between the Cash Amount and the actual revenues for such calendar quarter.

COER shall, within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Assignment Agreement. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the final calculation any amount paid to either party in excess of the amount required shall be promptly refunded to the appropriate party. Such final calculation shall be made within five (5) months after the end of each calendar year and within five (5) months of the end of the Term of this Assignment Agreement.

Upon reasonable written request during normal business hours and at no expense to COER, WSOR may inspect COER's records with respect to the Flatcars.

If at any time during the Term, the Interstate Commerce Commission abandons or lowers the per diem and mileage rates for the Flatcars set forth in the Table, the parties agree to negotiate a new assignment agreement; provided, however, that if a new agreement cannot be mutually agreed upon, COER may, at its sole option and upon not less than thirty (30) days' prior written notice to WSOR, terminate the Assignment Agreement.

Upon the expiration or termination of this Assignment Agreement, WSOR shall ensure that the Flatcars in WSOR's possession are in compliance with handling carrier's obligations under AAR Interchange Rules, normal wear and tear excepted, and shall remove the Flatcars from Car Service Directive 165. Thereafter, WSOR, at COER's option and instruction, shall either provide final outbound loads for each of the Flatcars or transport empty any or all of the Flatcars, at WSOR's expense, to any WSOR interchange point designated by COER. If no forwarding instructions are received from COER within thirty (30) days after the expiration or termination of this Agreement, COER will pay one dollar (\$1.00) per day per Flatcar to WSOR. Until the Flatcars are moved off WSOR, they will be per diem and mileage free.

WSOR recognizes that COER's rights and WSOR's rights are subject and subordinate to the rights of any lessor, owner or secured party with respect to the Flatcars, but COER hereby expressly represents and covenants that it is fully authorized to enter into this Assignment Agreement.

Please indicate your concurrence to the above terms and conditions by signing both (2) enclosed originals and arrange to have one (1) original returned to me.

Yours truly,

H.W. Crane
President

CONCURRENCE BY

WISCONSIN & SOUTHERN RAILROAD CO.

By: _____

Title: _____

Date: _____

SCHEDULE NO. 1

COER 100000
COER 100001
COER 100003-100030
COER 100050-100099

COER 250004
COER 250008
COER 250011
COER 250017
COER 250019
COER 250022
COER 250027
COER 250032-250035
COER 250037
COER 250039
COER 250044
COER 250052
COER 250054
COER 250055
COER 250063
COER 250065
COER 250067
COER 250073
COER 250074

SCHEDULE NO. 2

Certificate of Modification

Reporting Marks
and Number

Date Modified

EXHIBIT B

Certificate of Modification

**Reporting Marks
and Number**

Date Modified